

BILL ANALYSIS

H.B. 3
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Legislature created the Texas Windstorm Insurance Association (TWIA) to address the lack of available windstorm insurance in a specified territory along the Texas Gulf Coast. TWIA was designed to serve as the insurer of last resort for a property owner who wants to obtain basic wind and hail insurance coverage. The primary sources of exposure for TWIA are losses from tropical storms and hurricanes. TWIA originally was intended to provide coverage for dwellings and small commercial buildings, but since its creation, the association has grown exponentially and has been required to provide coverage for many large commercial and governmental structures beyond what was originally envisioned.

The statute governing TWIA has been changed a number of times, including changes designed to make the association more of a quasi-governmental entity with all of its governing board appointed by the commissioner of insurance. Despite the fact that TWIA is a quasi-governmental entity, it has been found subject to many laws that apply to licensed insurance companies, including laws permitting recovery of punitive, additional, and other damages that generally are not available in suits against a quasi-governmental entity or a governmental entity.

TWIA is not capitalized as an insurance company, has very little capital or surplus, and is funded by premiums from policyholders, reinsurance, reserves in a catastrophe reserve trust fund, and assessments on licensed property insurers. Before recent changes, TWIA assessed licensed insurers unlimited amounts needed to pay claims, with a certain amount of such contingent assessments being eligible for premium tax credits for premiums taxes paid to the state by licensed insurers.

Hurricanes Dolly and Ike resulted in billions of dollars in losses to TWIA, most of which were paid through assessments or reinsurance. Further changes were made to change the way losses in TWIA would be funded if another major hurricane strikes the Texas Gulf Coast, including authorization to issue post-event securities. Flooding is not covered by TWIA policies, yet numerous claims may have been paid or settled involving damages from causes other than those covered by the association policy. TWIA also has been inundated with lawsuits resulting from Hurricanes Dolly and Ike, imposing significant additional expense to the overall losses required to be paid by the association that could result in higher costs not only to consumers in the association but also to property insurance consumers statewide.

H.B. 3 clarifies and expands recent legislative changes so that TWIA, to be renamed the Texas Coastal Insurance Plan Association, will be regulated in a manner more consistent with its status as a quasi-governmental entity.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTIONS 21, 25, 28, and 35 of this bill; to the Texas Supreme Court in SECTION 35 of this bill; and to the legislative interim study committee, created by the bill, in SECTION 44 of this bill.

ANALYSIS

H.B. 3 changes the name of the Texas Windstorm Insurance Association to the Texas Coastal Insurance Plan Association. The bill establishes that a reference in law to the Texas Windstorm Insurance Association or the Texas Windstorm Insurance Association Act means the Texas Coastal Insurance Plan Association or the Texas Coastal Insurance Plan Act, respectively. The bill makes conforming changes to reflect the change of the association's name.

H.B. 3 amends the Insurance Code to make certain statutory provisions relating to the authority of the commissioner of insurance to issue emergency cease and desist orders also applicable to a person appointed as a qualified inspector under certain statutory provisions relating to property inspections regarding qualified inspectors and regarding the appointment of a licensed engineer as an inspector and applicable to a person acting as such a qualified inspector without being appointed as a qualified inspector under either of those provisions. The bill makes a certain statutory provision authorizing a trier of fact in a private action for damages over unfair methods of competition or unfair or deceptive acts or practices to award an amount not to exceed three times the amount of actual damages inapplicable to an action brought against the Texas Coastal Insurance Plan Association by a person insured under the Texas Coastal Insurance Plan Act.

H.B. 3 changes the period for the association's sunset review from the period in which agencies to be abolished in 2015 are reviewed to the period in which agencies to be abolished in 2013 are reviewed. The bill changes the expiration of the provision subjecting the association to sunset review from September 1, 2015, to September 1, 2013.

H.B. 3 defines "catastrophe year" as a calendar year in which an occurrence or a series of occurrences results in insured losses, regardless of when the insured losses are ultimately paid. The bill makes a conforming change to the definition of "association."

H.B. 3, with regard to certain actions brought against the association by the commissioner under certain statutory provisions relating to the supervision and conservatorship of delinquent insurers, establishes that:

- the association's inability to satisfy obligations related to the issuance of public securities under the Texas Coastal Insurance Plan Act constitutes a condition that makes the association's continuation in business hazardous to the public or to the association's policyholders for the purposes of certain statutory provisions relating to the circumstances in which an insurer is considered to have exceeded the insurer's powers;
- the time for the association to comply with the requirements of supervision or for the conservator to complete the conservator's duties, as applicable, is limited to three years from the date the commissioner commences the action against the association; and
- unless the commissioner takes further action against the association under certain statutory provisions relating to the supervision and conservatorship of delinquent insurers, as a condition of release from supervision, the association must demonstrate to the satisfaction of the commissioner that the association is able to satisfy obligations related to the issuance of public securities under the Texas Coastal Insurance Plan Act.

H.B. 3 prohibits a person from bringing a private action against the association, including a claim against an agent or representative of the association, under certain statutory provisions relating to unfair methods of competition and unfair or deceptive acts or practices in the insurance business and the Unfair Claim Settlement Practices Act. The bill makes the Unfair Claim Settlement Practices Act inapplicable to the processing and settlement of claims by the association.

H.B. 3 establishes standards of conduct for members of the association's board of directors and association employees that prohibit certain actions relating to the association. The bill makes an association employee who violates that prohibition or a code of conduct as provided by the bill

subject to an employee-related sanction, including termination of the employee's employment with the association. The bill makes a member of the board of directors or an employee who violates the prohibition subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule. The bill requires a board member, association employee, or member of the windstorm insurance legislative oversight board who reasonably suspects that a fraudulent insurance act has been or is about to be committed by any board member, association employee, or member of the oversight board, not later than the 30th day after discovering the conduct, to report the conduct and identity of the person engaging in the conduct to the Travis County district attorney or the Texas Department of Insurance (TDI).

H.B. 3 prohibits an association board member or employee from appointing, employing, or contracting with an individual related to that member or employee, or any member or employee, within the third degree by consanguinity or within the second degree by affinity for the provision of goods or services in connection with the operation or business of the association if the individual to be appointed or employed, or with whom a contract is to be entered into, is to be directly or indirectly compensated from association funds.

H.B. 3 prohibits the association from being considered a debtor authorized to file a petition or seek relief in bankruptcy under Title 11, U.S. Code.

H.B. 3 requires TDI, if the commissioner determines that 100 or more claims have been filed under association policies the bases of which are damage to insured property caused by the same storm, to conduct a random audit of the claim files of those claims to determine whether the association is adequately and properly documenting claims decisions in each claim file and to ensure that each claim is being handled appropriately, including being handled in accordance with the terms of the policy under which the claim is filed. The bill requires TDI to conduct such an audit as soon as possible after the filing of the 100th claim to ensure the quality of the process with which the association is handling such claims. The bill requires the commissioner, if, following such an audit, the commissioner determines that the association is not adequately and properly documenting claims decisions or that claims are not otherwise being handled appropriately, to notify the board of directors of that determination and identify the manner in which the association should correct any deficiencies identified by the commissioner.

H.B. 3, in a statutory provision requiring the excess losses and operating expenses of the association to be paid as provided by certain statutory provisions relating to the payment of losses in the Texas Coastal Insurance Plan Act if an occurrence or series of occurrences in a catastrophe area result in insured losses and operating expenses in excess of premium and other revenue of the association, specifies that the occurrence or series of occurrences is in a catastrophe year. The bill expands the requirement that losses not paid under such provisions be paid from the proceeds from Class 1 public securities authorized to be issued in accordance with the public securities program on or after the date of any occurrence or series of occurrences that results in insured losses to include such public securities authorized to be issued in accordance with the public securities program before that date. The bill authorizes such public securities that are issued before an occurrence or series of occurrences that results in incurred losses to be issued if the board of directors determines, before the date of any occurrence, that the amount available from premium and other revenue, in combination with the amounts available from the catastrophe reserve trust fund, may be insufficient to pay insured losses. The bill specifies that the \$1 billion cap per year on the amount of Class 1 public securities the association is required to issue to pay for certain losses is per catastrophe year, in the aggregate, for securities issued before the occurrence or series of occurrences that results in incurred losses in that year and securities issued on or after the date of that occurrence or series of occurrences. The bill conditions the requirement that the public securities be repaid in the manner prescribed by the public securities program from the association premium revenue on the securities being issued as described by these provisions, rather than conditioning that requirement on the losses being paid with public securities.

H.B. 3 specifies that the \$1 billion cap per year on the amount of Class 2 public securities and the \$500 million cap per year on the amount of Class 3 public securities that the association is authorized to issue to pay for certain losses are per catastrophe year.

H.B. 3 adds a temporary provision, set to expire December 31, 2012, authorizing the commissioner, for a vacancy occurring on the association's board of directors in a position required to be held by a representative of the insurance industry, to appoint a person who has demonstrated knowledge in insurance principles. The bill specifies that the appointment is for the lesser of 120 days or until the vacancy is filled. The bill makes this authorization inapplicable to a vacancy due to the expiration of a term and establishes that any appointment in effect on December 31, 2012, is continued until the expiration of the term of the appointment.

H.B. 3 requires the association to post on its Internet website the salary of each association employee who serves in a managerial capacity and any bonuses paid to those employees.

H.B. 3 expands the notification requirements for a meeting of the association's board of directors, except for an emergency meeting, to require the association to post notice of such a meeting on both the association's and TDI's Internet websites not later than the seventh day before the date of the meeting. The bill establishes that the specification that a meeting of the association's board of directors or the association's members is open to the commissioner or the commissioner's designated representative includes a closed meeting authorized by the state's open meetings law, rather than excepting such a meeting from being open to those individuals. The bill requires the commissioner or the commissioner's designated representative to maintain the confidentiality of any confidential information discussed in a closed meeting authorized by the state's open meetings law and prohibits those individuals from disclosing the content of such information. The bill requires the association to broadcast live on its Internet website all meetings of the board of directors, other than closed meetings, and to maintain on that website an archive of such meetings. The bill requires a recording of a meeting to be maintained in the archive through and including the second anniversary of the meeting.

H.B. 3 expands the primary objectives of the association's board of directors to include ensuring that the board, in addition to the association, operates in accordance with the Texas Coastal Insurance Plan Act, and commissioner rules, complies with sound insurance principles, and meets all standards imposed under the act. The bill includes among the board's primary objectives ensuring that the board and the association operate in accordance with the association's plan of operation; establish a code of conduct and performance standards for association employees and persons with which the association contracts; and establish, and adhere to terms of, an annual evaluation of association management necessary to achieve the statutory purpose, board objectives, and any performance or enterprise risk management objectives established by the board. The bill requires the association, not later than June 1 of each year, to submit to the commissioner, the windstorm insurance legislative oversight board, the governor, the lieutenant governor, and the speaker of the house of representatives a report evaluating the extent to which the board met the described primary objectives in the 12-month period immediately preceding the date of the report.

H.B. 3 makes the association subject to state open meetings and public information laws, except as specifically provided by the Texas Coastal Insurance Plan Act or another law. The bill establishes that a settlement agreement to which the association is a party is public information and is not exempted from required disclosure under the state's public information law and, if applicable, is required to contain the name of any attorney or adjuster involved with the claim that is the basis of the settlement. The bill prohibits that provision relating to a settlement agreement from being construed to limit or otherwise restrict the categories of information that are public information.

H.B. 3 requires the association's plan of operation to require the association to use the claim settlement guidelines published by the commissioner in accordance with the bill's provisions in

evaluating the extent to which a loss to insured property is incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, or wind-driven rain associated with a storm.

H.B. 3, in a statutory provision requiring the association to make insurance available to each applicant in the catastrophe area whose property is insurable property but who, after diligent efforts, is unable to obtain property insurance through the voluntary market, as evidenced by one declination from an insurer authorized to engage in the business of, and writing, property insurance providing windstorm and hail coverage in the first tier coastal counties, specifies that the requirement to provide evidence of one declination with an application for renewal of an association policy is one declination every three calendar years. The bill, in a statutory provision requiring a property and casualty agent to submit an application for the insurance coverage on behalf of the applicant on forms prescribed by the association, specifies that such an application is for initial insurance coverage and authorizes a person insured under the Texas Coastal Insurance Plan Act to submit an application for renewal coverage directly to the association on forms prescribed by the association.

H.B. 3 makes the statutory provision requiring a statement as to whether an applicant for insurance coverage under the Texas Coastal Insurance Plan Act has submitted or will submit the premium in full from personal funds or, if not, to whom a balance is or will be due apply to an application for initial or renewal coverage. The bill, in a statutory provision requiring an application for initial or renewal coverage to contain a statement that the agent possesses proof of the described declination and proof of flood insurance coverage or unavailability of that coverage as described by certain statutory provisions applicable only to certain structures constructed, altered, remodeled, or enlarged on or after September 1, 2009, specifies that the agent acting on behalf of the applicant possesses such proof, regardless of whether the agent or the applicant submits the application for coverage.

H.B. 3, in a statutory provision requiring the association, if the association determines that the property for which an application for insurance coverage is made is insurable property and on payment of the premium, to direct the issuance of an insurance policy as provided by the plan of operation, specifies that the requirement relates to an application for initial insurance coverage. The bill requires the commissioner to adopt rules governing the rate of agent commissions on policies that may be renewed annually and requires such rules to require that commission rates be reasonable and not excessive, based on the time required of, and the nature of work to be performed by, an agent.

H.B. 3, in statutory provisions relating to the cancellation of certain coverage, requires the property and casualty agent who received a commission as the result of the issuance of an association policy providing the canceled coverage, rather than the agent who submitted the application, to refund the agent's commission on any unearned premium in the same manner an insured person who requests cancellation of the insurance coverage is refunded any unearned premium. The bill reduces from not less than 180 days to not less than 90 days the required period for the minimum retained premium in the plan of operation, with certain exceptions.

H.B. 3 requires a windstorm and hail insurance policy issued by the association to require an insured to file a claim under the policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs and to contain, in boldface type, a conspicuous notice concerning the resolution of disputes under the policy, including the following: the processes and deadlines for appraisal under the bill's provisions relating to appraisal in damage disputes and independent coverage review under the bill's provisions relating to review by an independent review panel and the necessity of complying with applicable requirements in the bill to seek administrative or judicial relief. The bill authorizes the commissioner, on a showing of good cause by an insured, to extend the one-year period for filing a claim for a period not to exceed 180 days.

H.B. 3 prohibits the association from issuing coverage for the following structures, regardless of whether the structure is otherwise insurable under the Texas Coastal Insurance Plan Act: a wind turbine; a structure used primarily as a casino or other gambling establishment; a structure used as a sexually oriented business as defined by certain Local Government Code provisions; or a structure in which, or in any portion of which, an establishment is located that is used primarily for the operation of video lottery machines, eight-liners, or other gambling devices, regardless of whether the gambling devices are regulated under state law.

H.B. 3 authorizes TDI to establish an annual renewal period for persons appointed as qualified inspectors of property for windstorm and hail insurance.

H.B. 3 establishes that TDI has exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for purposes of the Texas Coastal Insurance Plan Act and requires the commissioner by rule to establish criteria to ensure that a person, including a licensed engineer, seeking such appointment possesses the knowledge, understanding, and professional competence to perform windstorm inspections and to comply with other requirements of the act. The bill makes the criteria established by the commissioner applicable only to a determination concerning the appointment of a qualified inspector under the act. The bill specifies that the exclusive jurisdiction of TDI under these provisions of the bill does not apply to the practice of engineering as defined by certain provisions of the Occupations Code or to a license issued, qualification required, determination made, order issued, judgment rendered, or other action of a board operating under the Texas Engineering Practice Act. The bill establishes that the authority of that board prevails with regard to the practice of engineering in the event of conflict.

H.B. 3, in statutory provisions relating to certain disciplinary proceedings, authorizes the commissioner ex parte, in addition to any other action authorized under those provisions, to enter an emergency cease and desist order against a qualified inspector, or a person acting as a qualified inspector, if the following conditions apply: the commissioner believes that the qualified inspector, through submitting or failing to submit substantiating information, has failed to demonstrate that a structure or a portion of a structure subject to inspection meets the requirements of the act and TDI rules or has refused to comply with requirements imposed under the act or TDI rules, or that the person acting as a qualified inspector is acting without appointment as a qualified inspector under applicable provisions of law; and the commissioner determines that such conduct is fraudulent or hazardous or creates an immediate danger to the public.

H.B. 3 authorizes, on and after January 1, 2012, a person who has an insurable interest in a residential structure to obtain insurance coverage through the association for that structure without obtaining a certificate of compliance for the structure as required by certain statutory provisions relating to inspection requirements in accordance with the bill's provisions relating to alternative eligibility for coverage and rules adopted by the commissioner. The bill authorizes TDI to issue an alternative certification for a residential structure if the person who has an insurable interest in the structure demonstrates that at least one qualifying structural building component of the structure has been inspected by a TDI inspector or by a qualified inspector and has been determined to be in compliance with applicable building code standards, as set forth in the plan of operation. The bill requires the commissioner to adopt reasonable and necessary rules to implement the bill's provisions relating to alternative eligibility for coverage and requires the rules to establish which structural building components are considered qualifying structural building components for the purposes of the bill's provisions relating to alternative certification, taking into consideration those items that are most probable to generate losses for the association's policyholders and the cost to upgrade those items.

H.B. 3 requires, except as provided by certain statutory provisions relating to inspection requirements, a person who has an insurable interest in a residential structure that is insured by the association as of January 1, 2012, but for which the person has not obtained a certificate of

compliance, to obtain an alternative certification under the bill's provisions before the association, on or after January 1, 2013, may renew coverage for the structure. The bill requires each residential structure for which a person obtains an alternative certification to comply with the requirements of the Texas Coastal Insurance Plan Act, including those relating to mandatory compliance with building codes, and the association's underwriting requirements, including maintaining the structure in an insurable condition and paying premiums in the manner required by the association. The bill requires the association to develop and implement an actuarially sound rate, credit, or surcharge that reflects the risks presented by structures with reference to which alternative certifications have been obtained. The bill authorizes such a rate, credit, or surcharge to vary based on the number of qualifying structural building components included in a structure with reference to which an alternative certification is obtained.

H.B. 3 requires the association's board of directors, if the association does not purchase reinsurance as authorized by certain statutory provisions, to submit to the commissioner, the windstorm insurance legislative oversight board, the governor, the lieutenant governor, and the speaker of the house of representatives, not later than June 1 of each year, a report containing an actuarial plan for paying losses in the event of a catastrophe with estimated damages of \$2.5 billion or more. The bill sets out certain requirements for the report. The bill prohibits a person who prepares the report from contracting to provide any other service to the association, except for the preparation of similar reports, before the third anniversary of the date the last report prepared by the person is submitted.

H.B. 3 requires the board, not later than June 1 of each year, to submit to the commissioner, the windstorm insurance legislative oversight board, the governor, the lieutenant governor, and the speaker of the house of representatives a catastrophe plan covering the period beginning on the date the plan is submitted and ending on the following May 31. The bill requires the catastrophe plan to describe the manner in which the association will, during the period covered by the plan, evaluate losses and process claims after windstorms with a one, two, and four percent chance of occurring during the period covered by the plan that affect an area of maximum exposure to the association. The bill requires the catastrophe plan to include, if the association does not purchase reinsurance for the period covered by the plan, an actuarial plan for paying losses in the event of a catastrophe with estimated damages of \$2.5 billion or more. The bill requires the plan to include a description of how losses under association policies will be paid and how claims under such policies will be administered and adjusted during the period covered by the plan.

H.B. 3 makes certain statutory provisions relating to appeals under an association policy inapplicable to a person who is required to resolve a dispute under the bill's provisions relating to the settlement and dispute resolution of claims.

H.B. 3 makes certain provisions of the Texas Coastal Insurance Plan Act relating to venue and claim disputes relate instead to disputes other than claim disputes. The bill removes from those provisions language authorizing a person to bring an action against the association under certain statutory provisions relating to unfair methods of competition and unfair or deceptive acts or practices. The bill authorizes a person who brings an action against the association under those provisions to recover only the amount of actual damages, plus court costs and reasonable and necessary attorney's fees, and prohibits such a person from recovering consequential, punitive, or exemplary damages, including damages awarded under certain laws relating to unfair methods of competition and unfair or deceptive acts or practices or relief for consumers from deceptive trade practices.

H.B. 3 requires a person insured under the Texas Coastal Insurance Plan Act who brings an action against the association to bring the action not later than the second anniversary of the date of the act, ruling, or decision of the association by which the insured is aggrieved. The bill establishes that this provision constitutes a statute of repose and controls over any other applicable limitations period.

H.B. 3 sets out provisions relating to settling claims against the association and resolving disputes involving such claims and establishes that those provisions provide the exclusive remedies for a claim against the association, including an agent or representative of the association. The bill prohibits the association or an agent or representative of the association from being held liable for any amount on a claim other than amounts payable under the terms of the association policy for loss to an insured structure, loss to contents of an insured structure, and additional living expenses and any costs and fees awarded under the bill's provisions relating to judicial review. The bill prohibits the association or an agent or representative of the association from being held liable for damages under state deceptive trade practices law or under any provision of any law providing for trebling of damages or a penalty.

H.B. 3 requires an insured to file a claim under an association policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs. The bill requires the association, not later than the 90th day after the date the association receives a claim, to notify the claimant in writing of the amount of money, if any, the association will pay the claimant for the claim and to provide the claimant with a detailed description of the assumptions or estimates used by the association in determining that amount or, if the association determines that, in whole or in part, the property damaged is not insured under the association policy, or that the property insured under the policy was damaged by an event or peril not covered by the policy, a detailed description of the factual and legal basis on which the association determined that a coverage or causation dispute exists concerning all or part of the claim.

H.B. 3 establishes a presumption that a claim is covered by an association policy if the association does not notify the claimant within the prescribed period. The bill authorizes the association to extend the 90-day period for a period not to exceed 90 days, if, before the end of the initial period, the association determines that special circumstances require such an extension and notifies the claimant in writing of that determination and those circumstances. The bill requires the association, if a claimant fails to submit information necessary for the association to determine whether to pay a claim or any portion of a claim or to deny payment of a claim or any portion of a claim, to request in writing any necessary information from the claimant not later than the 15th day after the date the association receives notice of the claim. The bill authorizes the association, for good cause, to make a request for additional information not later than the 30th day after the date the association receives notice of the claim. The bill makes the applicable 90-day period, if the association makes a written request for information, toll from the date the association requests the information until the date the association receives from the claimant information responsive to the request. The bill requires the association, in addition to the notice and information otherwise required, to notify a claimant of the time limits to request review of the association's determination.

H.B. 3 authorizes a claimant aggrieved by such a determination to request in writing, not later than the 30th day after the date the claimant receives the association's determination, a review of the determination and to submit written comments, documents, records, and other information to the association with or following the request for review. The bill requires the association, on request and free of charge, to provide a claimant requesting review of an association determination reasonable access to all information relevant to the determination that is being reviewed and authorizes the claimant to copy the information at the claimant's own cost or to request the association to provide a copy of all or part of the information to the claimant. The bill authorizes the association to charge a claimant the actual cost incurred in providing a copy of information, excluding any amount for labor involved in making any information or copy of information available to a claimant. The bill requires the association, not later than the 60th day after the date the association receives a request for review, to notify the claimant in writing of the outcome of the review. The bill authorizes the association and the claimant to agree to extend the 60-day period. The bill requires the association's notice to the claimant of the outcome of the review to be in writing, contain the reasons for the outcome, and notify the claimant of the time limits to request, as applicable, appraisal or review by an independent review panel.

H.B. 3 authorizes a claimant to request appraisal of the extent of damage to the property, or the cost of repairing or replacing the property, insured under the policy if, after review of an association determination, a damage dispute exists with reference to a claim filed under an association policy, but a coverage or causation dispute does not exist with reference to that claim. The bill requires a claimant to make a written request for appraisal not later than the 30th day after the date the claimant receives actual or constructive notice of the outcome of the association's review of a determination that is the basis of the damage dispute. The bill authorizes the commissioner of insurance to grant an additional 30-day period in which a claimant may request appraisal if the claimant, on a showing of good cause and not later than the 60th day after the expiration of the 30-day period, requests in writing that the 30-day period to request appraisal be extended.

H.B. 3 requires a claimant and the association, if the claimant requests appraisal, to resolve the damage dispute through appraisal, in accordance with the terms of the association policy. The bill establishes that the results of the appraisal are binding on the claimant and the association and subject to appeal and judicial review only in the manner provided by the bill's provisions and become final and appealable on the 15th day after the date the appealing party receives actual or constructive notice of the results.

H.B. 3 makes a request for appraisal, and participation in the appraisal process, a condition precedent to contesting an association determination concerning the extent of damage to property, or the cost of repairing or replacing property, insured under an association policy. The bill establishes that a claimant who does not request appraisal within the applicable period waives the right to contest an association determination concerning the extent of damage to property, or the cost of repairing or replacing property, insured under an association policy. The bill establishes that, if a claimant requests appraisal, the claimant is responsible for paying any costs incurred or charged by an appraiser retained by and on behalf of the claimant, that the association is responsible for paying any costs incurred or charged by an appraiser retained by and on behalf of the association, and that the claimant and the association are responsible in equal shares for any costs incurred or charged by any other appraiser chosen by the claimant's and the association's appraisers to participate in the resolution of the dispute. The bill requires the commissioner by rule to establish policies and procedures for an appraisal requested and conducted under the bill's provisions relating to appraisal in damage disputes.

H.B. 3 authorizes a claimant to seek resolution of all disputes concerning the claim, including a damage dispute, through review by an independent review panel if, after review of an association determination, a coverage or causation dispute exists with reference to a claim filed under an association policy. The bill requires a claimant to make a written request, mailed or served on the association or the commissioner, for review by an independent review panel not later than the 30th day after the date the claimant receives actual or constructive notice of the outcome of the association's review of a determination that is the basis of the causation, coverage, or damage dispute. The bill requires the association to immediately forward the request for review to the commissioner if a claimant mails or serves a request for review by an independent review panel. The bill authorizes the commissioner to grant an additional 30-day period in which the claimant may request independent review if a claimant, on a showing of good cause and not later than the 60th day after the expiration of the 30-day period, requests in writing that the 30-day period to request review by an independent review panel be extended.

H.B. 3 requires the commissioner to appoint an independent review panel, consisting of three members selected by the commissioner from a roster of qualified panel members maintained and published by the commissioner, to resolve a claim dispute in the manner described by the bill for such a review. The bill requires the commissioner, if a selected panel member cannot serve or declines to serve for any reason, to select a new panel member not later than the 10th day after the date the panel member notifies the commissioner of the member's inability or unwillingness to serve. The bill requires the commissioner to appoint one member of the panel to serve as presiding officer. The bill requires an independent review panel to make a determination

concerning, as applicable, the causation, coverage, or damage dispute submitted to the panel for review and notify the claimant and the association in writing of the panel's determination as soon as practicable, but not later than the 120th day after the date the independent review panel is appointed. The bill authorizes the commissioner to grant a reasonable extension for the panel to make a determination or dissolve the panel and appoint a new panel to conduct the review if the independent review panel does not make a determination concerning a dispute before the 120th day.

H.B. 3 requires an independent review panel to determine whether the review of a dispute involves a technical issue requiring guidance or information from a technical panel and, if so, to request from the technical panel guidance and any information relevant to the dispute. The bill makes the 120-day period toll from the date the independent review panel requests guidance or information from the technical panel through the date on which the independent review panel receives the requested guidance or information. The bill establishes that the determination of an independent review panel is binding on the claimant and the association and is subject to appeal and judicial review only in the manner provided by the bill and becomes final and appealable on the 15th day after the date the appealing party receives actual or constructive notice of the determination. The bill requires the commissioner by rule to establish the qualifications for members of the independent review panel, procedures and deadlines to be used in independent review, procedures and requirements relating to the exchange of documents during the independent review process, and procedures or requirements necessary for any other matter regarding the handling of requests for review. The bill requires such rules to ensure that the independent review process is fair to the claimant and enables the claimant to participate in the independent review process without engaging legal counsel.

H.B. 3 requires the commissioner to appoint a technical panel of experts to advise the association concerning the extent to which damage to property insured under an association policy was incurred as a result of wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with a storm. The bill requires the panel to consist of a number of experts to be decided by the commissioner and requires the commissioner to appoint one member of the panel to serve as the presiding officer of the panel. The bill requires members of the panel to have professional expertise in, and be knowledgeable concerning, the geography and meteorology of the Texas seacoast territory, as well as the scientific basis for determining the extent to which damage to property is caused by wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with a storm. The bill requires the panel to meet at the request of the commissioner or the call of the panel's presiding officer. The bill requires the commissioner to adopt rules regarding notice of panel meetings and the transparency of deliberations of the technical panel.

H.B. 3 requires the technical panel to investigate, collect, and evaluate the information necessary to provide recommendations and to provide guidance or other information requested by an independent review panel. The bill requires the panel, at the commissioner's request, to recommend methods for determining the extent to which damage to property insured under an association policy resulted from wind, waves, tidal surges, rising waters not caused by waves or surges, and wind-driven rain associated with a storm for geographic areas or regions designated by the commissioner. The bill requires the commissioner, after consideration of such recommendations made by the panel, to publish guidelines that the association will use to settle claims. The bill establishes that a member of the technical panel is not individually liable for an act or failure to act in the performance of the official duties in connection with the individual's work on the panel.

H.B. 3 entitles a claimant who has exhausted all administrative remedies and who is aggrieved by an appraisal or the determination of an independent review panel to judicial review. The bill prohibits a claimant from seeking judicial review before exhausting all administrative remedies. The bill authorizes a claimant to seek judicial review of an appraisal or the determination of an independent review panel in the applicable manner provided for the appeal of contested cases

under certain provisions of the Administrative Procedure Act. The bill makes the standard for judicial review the substantial evidence rule. The bill authorizes a court, in a proceeding for judicial review, to award only the amount described by certain provisions of the bill relating to exclusive remedies and a limitation on awards, plus court costs and reasonable and necessary attorney's fees.

H.B. 3 authorizes a claimant aggrieved by an appraisal process or the determination of an independent review panel to appeal to a district court in the county in which the loss that, as applicable, is the subject of the appraisal or independent review occurred, for a determination concerning the amount of the loss, whether the loss is covered by or insured under the association policy, whether the loss was caused by a hazard or risk insured under the policy, and the amount of court costs and reasonable and necessary attorney's fees. The bill requires that an appeal to a district court be trial de novo and limits the questions that are authorized to be presented and determined at the trial de novo to the determinations described in the preceding provision. The bill limits the evidence that may be admitted in a trial de novo to evidence that was admitted or presented in the appraisal process or the independent review process and specifies that the Texas Rules of Evidence govern whether evidence so presented is admissible in a trial de novo. The bill requires a petition for trial de novo to be filed with a district court in the county in which the loss that, as applicable, is the subject of the appraisal or independent review occurred, not later than the 30th day after the date on which the determination being appealed is final and appealable. The bill requires the appeal seeking a trial de novo to be presided over by a judge appointed by the judicial panel on multidistrict litigation and requires a judge so appointed to be a resident of a first tier coastal county or a second tier coastal county. The bill requires the Texas Supreme Court to adopt rules governing the proceedings of a trial de novo for an appeal of an appraisal process or the determination of an independent review panel.

H.B. 3 establishes that the bill's provisions prevail to the extent of any conflict between certain provisions of the bill relating to settling claims against the association and resolving disputes involving such claims and any other law. The bill tolls the deadline imposed on a claimant relating to a review of an agency determination, an appraisal, or a review by an independent panel for a single period not to exceed 45 consecutive days during which the claimant is actively seeking resolution of the causation dispute, coverage dispute, or damage dispute through a mediation administered by TDI. The bill defines "association policy," "causation dispute," "claim," "claimant," "coverage dispute," and "damage dispute" for purposes of certain provisions of the bill relating to claims settlement and dispute resolutions.

H.B. 3 redefines "Class 1 public securities," for purposes of the association's public securities program, to include certain public securities authorized to be issued before an occurrence or series of occurrences that results in insured losses. The bill requires the association to submit to the commissioner a cost-benefit analysis of various financing methods and funding structures when requesting the Texas Public Finance Authority to issue Class 1, Class 2, or Class 3 public securities.

H.B. 3, in a statutory provision requiring the board of directors to notify the association of the amount of the public security obligations and the estimated amount of public security administrative expenses, if any, each year within a specified period to permit the association to take certain actions relating to the repayment of the association's public security obligations, specifies that each year refers to a calendar year. The bill, in a statutory provision authorizing certain revenue collected in any year to be used to pay public security obligations payable in the subsequent year, in addition to other uses, specifies that a year is a calendar year.

H.B. 3 authorizes an association member to elect to pay an assessment relating to the payment of Class 2 public securities in a lump sum. The bill removes the specification that the premium surcharges used to pay 70 percent of the cost of the Class 2 public securities are nonrefundable premium surcharges. The bill specifies that the premium surcharge required to be assessed against policyholders by each insurer, the association, and the Texas FAIR Plan Association

applies to policyholders of a policy that is in effect on or after the 180th day after the date the commissioner issues notice of the approval of the public securities. The bill, in a statutory provision requiring the premium surcharge to be set in an amount sufficient to pay all debt service not already covered by available funds and all related expenses on the public securities, specifies that amount to be sufficient to pay for the service and expenses for the duration of the issued public securities.

H.B. 3 clarifies the type of policyholder on whom the premium surcharge is required to be assessed to require the surcharge to be assessed on all policyholders of policies that cover insured property located in a catastrophe area, including automobiles principally garaged in a catastrophe area, rather than on policyholders who reside or have operations in a catastrophe area or whose insured property is located in a catastrophe area. The bill includes an automobile insurance policy issued for automobiles located in the catastrophe area among the policies on which the premium surcharge is required to be assessed. The bill makes the premium surcharge applicable to the property insurance portion of a commercial multiple peril insurance and to all policies written under the following lines of insurance: fire and allied lines, farm and ranch owners, residential property insurance, private passenger automobile liability and physical damage insurance, and commercial passenger automobile liability and physical damage insurance. The bill removes language making the premium surcharge applicable to all policies that provide coverage on any premises, locations, operations, or property located in a catastrophe area for all property and casualty lines of insurance, other than federal flood insurance, workers' compensation insurance, accident and health insurance, and medical malpractice insurance.

H.B. 3, in the statutory requirement that the association assess its members an amount not to exceed \$500 million per year for the payment of losses relating to the association's payment of Class 3 public securities, specifies that the assessment is per catastrophe year. The bill authorizes an association member to elect to pay such an assessment in a lump sum.

H.B. 3 requires a legislative interim study committee to conduct a study of alternative ways to provide insurance to the seacoast territory of Texas through a quasi-governmental entity. The bill sets out the composition of the committee, including the designation of a chair or two co-chairs. The bill requires the committee to do the following:

- examine alternative ways to provide insurance to the seacoast territory of Texas through a quasi-governmental entity;
- recommend the appropriate scope of authority and responsibility for the entity to provide insurance to the seacoast territory of Texas, an organizational structure to exercise authority and responsibility over the provision of insurance to the seacoast territory of Texas, a timetable for implementation, and specific amendments to state laws and rules that are necessary to implement the committee's recommendations; and
- estimate funding requirements to implement the recommendations.

The bill authorizes the committee to adopt rules necessary to conduct business under, and implement, provisions of the bill relating to the committee. The bill authorizes the committee to operate in the same manner as a joint committee of the 82nd Legislature, except as otherwise provided, and requires the committee, not later than December 1, 2012, to report to the governor and the legislature the committee's recommendations.

H.B. 3 provides for an adjuster advisory board, composed of nine members appointed by the commissioner, to make recommendations to the commissioner regarding matters related to the licensing, testing, and continuing education of licensed adjusters; matters related to claims handling, catastrophic loss preparedness, ethical guidelines, and other professionally relevant issues; and any other matter the commissioner submits to the advisory board for a recommendation. The bill sets out member qualifications and provides that a member of the advisory board serves without compensation but entitles a member to reimbursement for reasonable expenses incurred in attending meetings of the advisory board, if authorized by the

commissioner. The bill makes the advisory board subject to certain Government Code provisions relating to state agency advisory committees.

H.B. 3 makes its provisions applicable only to a Texas windstorm and hail insurance policy, and a claim or dispute arising under such a policy, delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association (TWIA) on or after the 30th day after the bill's effective date. The bill provides that a Texas windstorm and hail insurance policy, and a claim or dispute arising under a Texas windstorm and hail insurance policy, delivered, issued for delivery, or renewed by the Texas Windstorm Insurance Association before the 30th day after the effective date of this Act, are governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

H.B. 3 requires TWIA to amend its plan of operation to conform to the changes in law made by the bill not later than January 1, 2012. The bill provides that, if any provision of the bill or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the bill that can be given effect without the invalid provision or application, and that, to this end, the bill's provisions are severable.

H.B. 3 makes conforming and nonsubstantive changes.

H.B. 3 repeals Section 2210.551(e), Insurance Code, relating to the requirement that a hearing on an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of a particular claim be held, at the request of the claimant, in the county in which the insured property is located or in Travis County.

EFFECTIVE DATE

On passage or, if the bill does not receive the necessary vote, the 91st day after the last day of the legislative session.